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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA AT ANCHORAGE**

ENOCH ADAMS, JR., LEROY ADAMS,
ANDREW KOENIG, JERRY NORTON
DAVID SWAN and JOSEPH SWAN,

Plaintiffs.

V.

TECK COMINCO ALASKA INCORPORATED

Defendant.

Case No. A04-49 (JWS)

**PLAINTIFFS' REPLY
IN SUPPORT OF OBJECTIONS
TO LIABILITY WITNESS LIST
AND MOTIONS IN LIMINE
TO EXCLUDE WITNESSES
AND EVIDENCE THAT IS
NOT RELEVANT
(Evidence Code §402)**

NANA REGIONAL CORPORATION and
NORTHWEST ARCTIC BOROUGH,

Intervenors-Defendants.

1 **I. WITNESSES AT THE LIABILITY PHASE OF TRIAL MUST TESTIFY ABOUT**
2 **ISSUES RELEVANT TO LIABILITY.**

3 The Adams plaintiffs brought a motion in limine to exclude many of Teck Cominco's
4 witnesses at the liability phase of trial because, based on Teck Cominco's descriptions of the
5 proffered witnesses' testimony, it was wholly irrelevant to the issue of liability. Docket 221.
6
7 Teck Cominco has responded, at Docket 263 ("Opposition"), with a one paragraph response to
8 Docket 221 and an abbreviated table listing both its liability and penalty phases witnesses.
9 Opposition at 1-2.¹ Teck Cominco concedes that three of its witnesses would not offer relevant
10 testimony at trial, and withdraws them (Peter Chapman, David DeForest and John Key). Docket
11 263 at 3. Teck Cominco further fails entirely to respond to Adams's motion with respect to six
12 further witnesses (Greg Horner, Kevin Brix, Mike Botz, Anna Echter, Gretchen Miller and
13 Kathleen Willman), thus conceding Adams's point. Teck Cominco further has failed to respond
14 in any substantive fashion to Adams's arguments on the five witnesses who are offered to testify
15 about the Kivalina environment, the four government agency witnesses, the nine Teck Cominco
16 "explanatory witnesses," the 15 laboratory staffers, and the nine witnesses whose testimony
17 Adams seeks to limit to relevant issues. All of these witnesses should be precluded from
18 testifying at the liability phase as their testimony, as admitted by Teck Cominco in its lack of
19 response, is simply not relevant. Based on Teck Cominco's representations, Adams withdraws
20 its motion as to Wayne Hall and Keith Malone.

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¹Teck Cominco also responds in the same document to Adams's motion at Docket 211,
27 with a further two paragraphs. Opposition at 2-3. Adams addresses that Opposition in a separate
28 filing.

1 **II. TECK COMINCO HAS LARGELY FAILED TO RESPOND TO ADAMS'S**
2 **MOTION.**

3 Teck Cominco's single paragraph response to Adams's 33-page motion is telling. Under
4 Local Rule 7.1(d), failure to oppose a motion "may be deemed an admission that... the motion is
5 well taken." D.Ak.L.R. 7.1(d). For some of the entire *categories* of witnesses for which Adams
6 has carefully (and at some length) examined the proffered testimony of and described its
7 irrelevance here, Teck Cominco offers *one-sentence* defenses; for others, it offers no defense at
8 all. As is described below, these defenses do not address most of Adams's points, nor do they
9 confer relevance on Teck Cominco's proffered witnesses. The Court should grant Adams's
10 motion. D.Ak.L.R. 7.1(d).

13 Teck Cominco has not responded at all to the challenges to six of its witnesses. For two,
14 Greg Horner and Kathleen Willman, nothing in its Opposition or in the 17-page chart ties their
15 testimony to anything relevant at the liability phase of trial. Docket 263-2 at 7, 17. It has thus
16 conceded Adams's point as to these two witnesses. D.Ak.L.R. 7.1(d). For five – including Ms.
17 Willman again and also Kevin Brix, Mike Botz, Anna Echter and Gretchen Miller – Teck
18 Cominco makes no defense at all in its Opposition and none of the entries in the chart relate to
19 the proffered testimony Adams objects to. Teck Cominco has thus conceded Adams's point as to
20 these five witnesses, as well. D.Ak.L.R. 7.1(d). Accordingly, Mr. Horner and Ms. Willman
21 should be precluded from testifying entirely, and Mr. Brix, Mr. Botz, Ms. Echter and Ms. Miller
22 should have their testimony limited to relevant issues as set forth in the Proposed Order, Docket
23 221-2.
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1 **III. THE TESTIMONY OF ROLAND BOOTH, BERT ADAMS, THEODORE**
 2 **BOOTH, AL OTT AND JOYCE TSUJI IS NOT RELEVANT.**

3 Adams moved in limine to preclude Roland Booth, Bert Adams, Sr., Theodore Booth,
 4 Alvin G. Ott and Joyce Tsuji from testifying as their described testimony – about conditions in
 5 Kivalina or on the Wulik River – was not relevant to liability. Docket 221 at 4-6.² Teck
 6 Cominco defends these witnesses with a single sentence in its response: “Where the plaintiffs
 7 assert that it is relevant and appropriate for them to call various witnesses to discuss a particular
 8 subject, such as, for example, the impact of the mine on subsistence activities, at a minimum,
 9 testimony on the same subjects is relevant when proffered by the defendants, if for no other
 10 reason than to demonstrate the lack of credibility in the testimony offered by the plaintiffs.”

11 Opposition at 2. For four of the five witnesses, it also lists one line in Exhibit: “rebut plaintiffs’
 12 liability testimony.” Docket 263-2 at 1, 2, 11. For the fifth, Joyce Tsuji, it lists the rebuttal line
 13 and also “lack of cyanide in Teck Cominco’s effluent” and “permit compliance.” *Id.* at 16.

14 Teck Cominco’s response misunderstands the testimony to be offered by the plaintiffs.
 15 The four plaintiffs who will testify at the liability phase have waited six years for their day in
 16 Court. Standing is already established, making all of Teck Cominco’s witnesses’ testimony
 17 irrelevant. The four Adams plaintiffs who will testify at trial would like to briefly address the
 18 Court as to why they have brought this action, talking about the impact of the mine’s discharges
 19 on their lives, livelihoods as subsistence hunters and fishers, and environment. Their subjective
 20 experience is not appropriately subject to “rebuttal,” nor would rebuttal be relevant as the

26 ²For clarity, Adams here uses the original pagination at the bottom of the page of its
 27 motion, rather than that stamped by the Court’s electronic filing system at the top of the page,
 28 which is higher as it includes the caption page, table of contents and table of authorities.

1 testimony is merely, and briefly, giving context to the suit. Liability will be governed by the
2 discharge monitoring reports and other admissions by Teck Cominco. The testimony offered
3 solely to “rebut plaintiffs’ liability testimony” is not relevant here.
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5 Joyce Tsuji is also listed as testifying about “lack of cyanide in Teck Cominco’s effluent”
6 and “permit compliance.” Docket 263-2 at 16. The first of these topics is not relevant to
7 liability, which will be established – on a strict liability basis – by Teck Cominco’s DMRs and
8 lab reports. Dr. Tsuji’s explanations about cyanide have no place at the liability stage. Further,
9 “permit compliance” is not something Dr. Tsuji discusses at all in her expert reports, which focus
10 on “whether the discharge monitoring permit violations for total dissolved solids (TDS), cyanide,
11 and cadmium from the Red Dog mine... would result in human health effects[.]” Docket 212-3 at
12 1-2. Nothing in the reports is about “permit compliance” or non-compliance. See Dockets 212-3
13 (Tsuji report) and 212-2 (Tsuji addendum). Thus, Adams further moves to strike this testimony
14 by Tsuji as not disclosed to the plaintiffs and not in line with her expert reports.
15

16 Teck Cominco has failed to establish that the testimony of Roland Booth, Bert Adams,
17 Sr., Theodore Booth, Alvin G. Ott and Joyce Tsuji is relevant at the liability phase, and these
18 witnesses should be precluded from testifying at the liability phase.
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20 **IV. AS DESCRIBED BY TECK COMINCO, THE OPINIONS OF STATE AND
21 FEDERAL ENVIRONMENTAL OFFICIALS ARE NOT RELEVANT.**

22 Because the opinion of state employees is not relevant to this Court’s interpretation of
23 Teck Cominco’s violations of its federal permit, Adams move to preclude the testimony of
24 Nancy Sonafrank and Sharmon Stambaugh, two Alaska Department of Environmental
25 Conservation employees. Docket 221 at 6-8. Because the proffered testimony of two U.S.
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1 Environmental Protection Agency (EPA) officials did not relate to Teck Cominco's liability or its
2 permit violations, Adams similarly sought to preclude the testimony of EPA staffers Eva Chun
3 and Keith Cohon. *Id.* at 20-23.
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5 Teck Cominco defends these witnesses in a single sentence: "Where there is an issue of
6 fact as to what the permit requires [e.g. Docket 136 at 19], the testimony of those individuals
7 who wrote the permit, adopted the standards it incorporates and/or enforce the permit (including
8 both State and federal government witnesses) is relevant." Opposition at 2. While Adams may
9 quibble with this interpretation, Teck Cominco's argument founders on a more basic problem:
10 none of the state or federal witnesses it offers meet this standard. None are identified or
11 described as "those individuals who wrote the permit, adopted the standards it incorporates
12 and/or enforce the permit." Thus, even under Teck Cominco's formulation, the four witnesses it
13 offers are not providing relevant testimony at the liability phase and should be precluded from
14 testifying. D.Ak.L.R. 7.1(d).
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16 Teck Cominco lists Nancy Sonafrank as a witness, with the following description:
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18 The Section Manager for Water Quality Standards within the AK Department of
19 Environmental Conservation, Ms. Sonafrank will testify as to relevant water quality
20 standards and aquatic life criteria, including cyanide, and the use of the WAD testing
21 method.
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23 Liability Phase Witness List at 6. Teck Cominco states that Sharmon Stambaugh "Will testify as
24 to the compliance and monitoring of Red Dog wastewater discharges from the perspective of the
25 AK Dept. Of Environmental Conservation." Liability Phase Witness List at 6. Neither of these
26 descriptions identify Ms. Sonafrank or Ms. Stambaugh as "those individuals who wrote the
27 permit, adopted the standards it incorporates and/or enforce the permit." Teck Cominco has not
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1 offered any argument as to why the state officials' stated testimony will be relevant.³ This Court
 2 should preclude the two state witnesses from testifying. D.Ak.L.R. 7.1(d).
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4 Similarly, Teck Cominco's descriptions of the testimony to be offered by the two EPA
 5 staffers, Eva Chun and Keith Cohon, do not identify either as "those individuals who wrote the
 6 permit, adopted the standards it incorporates and/or enforce the permit." Both Ms. Chun and
 7 Mr. Cohon are listed with an almost identical description of their testimony:
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9 She is expected to testify regarding the regulatory action she took or participated in taking
 10 in relation to the regulation of Red Dog Mine's water discharge and management. Her
 11 testimony is expected to include information about the mine's operation and impacts that
 12 she gathered and/or considered relating to, in particular, to the compliance orders by
 13 consent (COBC) EPA gave to the mine and which she was involved. Her testimony may
 14 also include the regulatory standards she believes are appropriate and present for the
 15 Mine's water discharge.
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17 Liability Phase Witness List at 3-4 (Chun); *compare id.* at 4 (Cohon). Nowhere here are either
 18 identified as permit writers, standard adopters, or permit enforcers. Even by Teck Cominco's
 19 standard of relevance, these two witnesses fail.⁴
 20

21 As Adams demonstrated in its motion, none of the four agency employee witnesses were
 22 described as providing relevant testimony in the Final Witness List. Docket 221 at 6-8, 20-23.
 23 Nor has Teck Cominco's one-sentence response on which agency officials could provide relevant
 24 testimony – "those individuals who wrote the permit, adopted the standards it incorporates and/or
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26 ³In its Exhibit, it lists only "permit requirements" and "permit compliance" as the
 27 responses to Adams's challenge to these witnesses' relevance. Docket 263-2 at 14. As noted in
 28 the Motion, the testimony of state officials is not relevant as to either federal permit requirements
 or federal permit compliance. Docket 221 at 6-8.

26 ⁴Teck Cominco attempts to salvage these two witnesses in its Exhibit (Docket 263-2) by
 27 listing "whether ongoing" as part of their testimony. As no testimony on "whether ongoing" was
 28 identified or disclosed at all in the description given in the final witness list, nor does it
 correspond to any testimony offered in that list, it should be disregarded.

1 enforce the permit," Opposition at 2 – conferred relevance on the proffered testimony of any
 2 these four agency officials, none of whom are described as writing the permit, adopting the
 3 standards or enforcing the permit. Adams respectfully requests that the Court preclude the
 4 testimony of Nancy Sonafrank, Sharmon Stambaugh, Eva Chun and Keith Cohon as not relevant.
 5

6 **V. EXCUSES AND EXPLANATIONS OF WHY TECK COMINCO FAILED TO
 7 COMPLY ARE NOT RELEVANT UNDER THE STRICT LIABILITY REGIME
 8 OF THE CLEAN WATER ACT.**

9 Adams challenged Teck Cominco's listing of nine Teck Cominco employees as witnesses
 10 because their described testimony was an attempt to minimize the significance of the Clean
 11 Water Act's requirements, and their testimony was described as explanations of the reasons for
 12 non-compliance. Docket 221 at 8-13. As this Court well knows, good faith and substantial
 13 compliance are irrelevant as defenses at the liability phase of a Clean Water Act case such as this
 14 one. *California Public Interest Research Group v. Shell Oil*, 840 F. Supp. 712, 714 (N.D. Cal.
 15 1993) ("[Because the CWA imposes strict liability for any violation of a NPDES permit], neither
 16 good faith, impossibility, nor reporting errors, are accepted as valid defenses to liability"); *Sierra
 17 Club v. Union Oil of Cal.*, 813 F.2d 1480, 1491 (9th Cir. 1988), *vacated for reconsideration*, 485
 18 U.S. 931 (1988), *reinstated and amended*, 853 F.2d 667 (9th Cir. 1988) (rejecting the substantial
 19 compliance defense). On these grounds, Adams moved to preclude the testimony of Wayne Hall,
 20 Chuck Hingsbergen, John Key, Ed Koon, Jackie Lundberg, Keith Malone, John Martinisko,
 21 Robert Napier and Mike Schierman as not relevant. Docket 221 at 8-13.
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23 Teck Cominco again responds with a single sentence: "Where the plaintiffs seek liability
 24 for allegations that Teck Cominco did not follow particular procedures on particular days (e.g.
 25 monitoring and reporting violations), testimony as to the procedures at issue and whether they
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1 were followed is relevant, and the plaintiffs are wrong to assert otherwise.” Opposition at 1-2.
2 On its face, this defense of its nine witnesses only applies to two of them, Wayne Hall and Keith
3 Malone, who are the only ones offered with any description of “procedures.” Docket 221 at 8-
4 13. Adams respectfully withdraws its opposition to the testimony of Wayne Hall and Keith
5 Malone, as Teck Cominco’s argument on their testimony is well taken. It does not apply to the
6 other seven witnesses, however, none of whom are discussing “procedures” in Teck Cominco’s
7 description of their testimony. Docket 221 at 8-13. (Teck Cominco has withdrawn one of these
8 witnesses, John Key, who should be precluded by this withdrawal from any testimony at the
9 liability phase of trial. Opposition at 3.) Teck Cominco tries to shoehorn John Martinisko into
10 the category of relevant witnesses by listing “procedures incorporated in permit” in the witness
11 chart (263-2), but there is nothing in the Final Witness List under Mr. Martinisko’s testimony
12 description that discusses “procedures.” Docket 221 at 12.
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15 Nor can Teck Cominco’s belated listing of “alleged port exceedances” and “permit
16 compliance” in its witness chart (Docket 263-2) for Chuck Hingsbergen, John Key, Ed Koon,
17 Jackie Lundberg, confer relevance on those witnesses’ proffered testimony, which as explained
18 in the Motion, is simply not relevant to liability issues. Docket 221 at 9-11. Nor can its
19 abbreviated listing of “permit compliance” and “alleged exceedances” (Docket 263-2 at 11, 14)
20 confer relevance on the testimony of Robert Napier and Mike Schierman when the more full
21 description given in the Final Witness List does not include any discussion or description of
22 testimony on those two issues. Docket 221 at 12-13. Particularly galling is Teck Cominco’s
23 belated listing of Mr. Schierman as testifying about “legally excused non-compliance” (Docket
24 263-2 at 14), when there was no description of testimony of this type in the Final Witness List
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1 and the Clean Water Act imposes strict liability.

2 For the reasons more fully set forth in the motion, the Court should preclude Chuck
 3 Hingsbergen, John Key, Ed Koon, Jackie Lundberg, John Martinisko, Robert Napier and Mike
 4 Schierman from testifying at the liability phase of trial as their testimony is not relevant. Adams
 5 withdraws its motion as to Wayne Hall and Keith Malone.

6

7 **VI. "EXPLANATIONS" OF LAB TESTS AND METHODOLOGIES ARE NOT**
 8 **RELEVANT OR ALLOWED.**

9 As this Court recently ruled, Defendants may not impeach their own DMRs. Order at
 10 Docket 276; *see also Sierra Club*, 813 F.2d at 1491-92; *United States v. CPS Chem. Co.*, 779 F.
 11 Supp. 437, 442 (D. Ark. 1991) ("[f]or enforcement purposes, a permittee's DMRs constitute
 12 admissions regarding the levels of effluents that the permittee has discharged" (citation omitted)).

13

14 Adams moved to preclude the testimony of 15 witnesses who are offered as laboratory
 15 staffers – Sue Barkey, Richard Brown, Stan Capps, Peter Chapman, David DeForest, James
 16 Dryden, Steven Eide, Greg Horner, Kevin Lackey, Kent Patton, David Pillard, Mike Prieve,
 17 Mike Stanoway, William Stubblefield, and Jason Weakley – on the grounds testimony by lab
 18 staff is simply not relevant under the caselaw in the Ninth Circuit, given the strict liability nature
 19 of the Clean Water Act and the prohibition on impeaching one's own DMRs. Further, all the
 20 timely disclosed lab reports themselves are already admitted as exhibits and are the best evidence
 21 as to their contents. Docket 221 at 13-20. In its Opposition, Teck Cominco does not even
 22 mention this category of witness, effectively conceding to Adams the validity of plaintiffs'
 23 challenge. D.Ak.L.R. 7.1(d). From this category, Teck Cominco has conceded that Peter
 24 Chapman and David DeForest have no relevant testimony and has withdrawn them as witnesses;
 25

1 they should thus be precluded from appearing at the liability phase of trial.

2 Although Teck Cominco does not mention the lab employees at all in its Opposition
 3 (aside from conceding that Chapman and DeForest do not have relevant testimony), it does
 4 include several abbreviated descriptions for several of them in its witness chart (Docket 263-2).⁵
 5 These two- and three-word descriptions do not make the testimony of these lab employees
 6 relevant, as described below:

7 **“Whether ongoing.”** This legal determination is up to the Court. The ongoing nature of
 8 the violations will be proven by Adams at trial on the basis of the DMRs, the COBCs, and the
 9 testimony of Teck Cominco employees. To the extent that lab reports factor into this
 10 determination, those lab reports are the best evidence and speak for themselves. Thus, listing
 11 Sue Barkey, Stan Capps, James Dryden, Steven Eide, Kent Patton, Mike Prieve, Mike Stanoway
 12 and William Stubblefield under this category cannot make their testimony relevant, and they
 13 should be precluded from testifying at the liability phase of trial.

14 **“Permit Compliance” or “Compliance with Permit.”** To the extent that the lab reports
 15 demonstrate permit compliance or non-compliance, the reports themselves – which have all been
 16 admitted – are the best evidence. Under the strict liability regime of the Clean Water Act,
 17 explanations of compliance or non-compliance are not relevant, and thus Teck Cominco’s listing
 18 Richard Brown, James Dryden, Kevin Lackey, David Pillard, Jason Weakley under this category
 19 cannot make their testimony relevant, and they should be precluded from testifying at the liability
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 27 ⁵As noted above, Teck Cominco does not even make this effort for Greg Horner. Docket
 28 263-2 at 7. Mr. Horner should be precluded from testifying at the liability phase of trial.
 D.Ak.L.R. 7.1(d).

1 phase of trial.

2 **“Alleged exceedances.”** Again, explanations as to exceedances have no place at the
 3 liability phase of trial. Thus, Sue Barkey, Richard Brown, Stan Capps, Steven Eide, Kevin
 4 Lackey, Kent Patton, David Pillard, Mike Prieve, Mike Stanoway and William Stubblefield
 5 cannot provide relevant as to this issue, and they should be precluded from testifying at the
 6 liability phase of trial.

7 **“Explain DMRs and supporting documents.”** Under case law such as *California*
 8 *Public Interest Research Group v. Shell Oil*, 840 F. Supp. 712, 714 (N.D. Cal. 1993), “neither
 9 good faith, impossibility, nor reporting errors, are accepted as valid defenses to liability.” Thus,
 10 whether or not Sue Barkey, Stan Capps, Steven Eide, Kent Patton, David Pillard, Mike Prieve,
 11 Mike Stanoway and William Stubblefield can “explain” the DMRs, their testimony at the
 12 liability phase of trial is irrelevant and they should be precluded from testifying.

13 **“Excused non-compliance.”** Richard Brown is listed as testifying on this issue.
 14 Because Teck Cominco cannot excuse its non-compliance, Mr. Brown’s testimony is not relevant
 15 at the liability phase of trial.

16 Because Teck Cominco has not shown that their testimony is relevant in any way, and
 17 because their testimony as described is on its face irrelevant, Sue Barkey, Richard Brown, Stan
 18 Capps, Peter Chapman, David DeForest, James Dryden, Steven Eide, Greg Horner, Kevin
 19 Lackey, Kent Patton, David Pillard, Mike Prieve, Mike Stanoway, William Stubblefield, and
 20 Jason Weakley should be precluded from testifying at the liability phase of trial.

21 **VII. THE COURT SHOULD LIMIT THE TESTIMONY OF SOME WITNESSES TO
 22 ISSUES RELEVANT TO LIABILITY.**

23 In their Motion, the Adams plaintiffs moved to preclude certain aspects of the testimony

1 of Mark Thompson, Kevin Brix, Mike Botz, Jeffrey Clark, Gary Coulter, Anna Echter, Gretchen
2 Miller, Kathleen Willman and James Kulas because Teck Cominco may not “explain” or
3 impeach its DMRs. Docket 221 at 23-27. Adams requested an Order from this Court limiting
4 the testimony of those witnesses to relevant topics. *Id.*

5 For five of these witnesses – Kevin Brix, Mike Botz, Anna Echter, Gretchen Miller and
6 Kathleen Willman – Teck Cominco offers no defense at all. Opposition at 1-3. It simply never
7 mentions them or any category of witness that pertain to them. It thus concedes Adams’s motion
8 as to these witnesses, and their testimony should be limited as set forth in Adams’s motion and
9 Proposed Order [Docket 221-2].

10 Teck Cominco responds in two sentences, which address – but do not resolve – Adams’s
11 objections to the remaining four witnesses’s testimony. First, it defends the proffered testimony of
12 two of its witnesses: “where even the plaintiffs acknowledge that whether violations are ongoing
13 is an element of their claims, there cannot possibly be a basis for striking those witnesses whose
14 testimony is to include ‘the non-ongoing nature of alleged violations’. [E.g. Coulter and Clark.]”
15 Opposition at 2. Then, it defends two other witnesses by asserting, “where, for example, the
16 plaintiffs intend to call various Teck Cominco employees to testify on a variety of subjects, it is
17 appropriate for the defendants to call those same witnesses to testify on the same subjects.”
18 Opposition at 2. Both of these arguments are misplaced and do not address Adams’s relevance
19 objections.

20 Adams challenged the testimony of Mr. Clark and Mr. Coulter not on the ongoing nature
21 of the violations, but for their testimony on “all aspects of the company’s environmental
22 management system, mineralization, and water balance issues.” Docket 221 at 25. Teck
23

1 Cominco does not address any of these three topics – environmental management,
2 mineralization, or water balance – and thus concedes that Mr. Clark and Mr. Coulter are not
3 offering relevant testimony on those issues. The Court should grant Adams's motion to preclude
4 Mr. Clark and Mr. Coulter from testifying at the liability phase about these issues. D.Ak.L.R.
5 7.1(d).

6 Second, the only Teck Cominco staff whom Adams challenges in this motion and also
7 intends to call at the liability phase of trial are Mark Thompson and James Kulas. Adams
8 objected to specific portions of the proffered testimony of Mr. Thompson, which are not the
9 “same subjects” that Adams has listed for Mr. Thompson in its witness list. Docket 221 at 23-
10 24; *compare* Docket 200 (Adams's witness list). Similarly, Adams objected to specific portions
11 of the testimony of James Kulas, which are not the “same subjects” that Adams listed from Mr.
12 Kulas in its witness list. Docket 221 at 26-27; *compare* Docket 200 (Adams's witness list).
13 Because Teck Cominco has not addressed Adams's objections to the relevance of Mr. Thompson
14 and Mr. Kulas's testimony, the Court should grant Adams's motion to preclude Mr. Thompson
15 and Mr. Kulas from offering testimony on irrelevant issues. D.Ak.L.R. 7.1(d). As set forth in
16 the Proposed Order [Docket 221-2], Adams moves to preclude Mr. Thompson and Mr. Kulas
17 from testifying at the liability phase about “issues pertaining to maintenance of the water balance
18 at Red Dog, policies and procedures employed within his department, the history of waste water
19 permitting, and efforts to comply with existing and past permits and to obtain workable permits.”
20

21 **VIII. CONCLUSION**

22 For the reasons set forth above, this Court should dramatically limit the number of
23 witnesses Teck Cominco is allowed to present at the liability phase, and strictly limit those
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witnesses testimony to subjects relevant to liability.

Respectfully submitted this 28th day of February, 2008.

/S/ Luke Cole

Luke Cole
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of February 2008, a true and correct copy of the foregoing Plaintiffs' Reply in Support of Objections to Witness List and Motions to Exclude Witnesses was served, via electronic mail, on the below identified parties of record:

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